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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION

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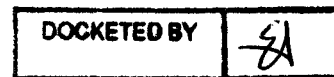
IN THE MATTER OF THE)
PROPOSED RULE-RETAIL)
ELECTRIC COMPETITION)

DOCKET NO. U-0000-94-165

Arizona Corporation Commission

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Comments on the Proposed Rule on Retail Electric Competition
(Nov. 8, 1996 version)

Filed on behalf of Arizona consumers organizations:

Arizona Community Action Association
Arizona Consumers Council
Arizona Citizens Action

Respectfully submitted this 8th day of November, 1996

Brian D. Walsh

Comments on the Proposed Rule on Retail Electric Competition

Docket No. U-0000-94-165

**By Arizona Consumers Organizations, Including:
Arizona Community Action Association
Arizona Consumers Council
Arizona Citizen Action**

November 8, 1996

The Arizona Community Action Association, the Arizona Consumers Council, and Arizona Citizen Action appreciate the opportunity to provide the following comments on the Proposed Rule on Retail Electric Competition.

The form of retail electric competition implemented in Arizona must provide net benefits to residential and low income consumers.

Throughout the process leading up to the Proposed Rule, the consumers organizations have made it clear that we are not willing to support retail electric competition if it will result in higher prices and costs, cost shifting, increased risks (including threats to environmental quality), and/or poorer quality of service for residential and low income consumers. The consumers organizations are willing to support retail electric competition *only* if it will provide net benefits (i.e., benefits that exceed costs and risks) for residential and low income consumers. These net benefits have been promised by the advocates of retail electric competition, particularly by the industrial and large commercial consumers, and by power marketers and some utilities. However, the consumers organizations do not believe that all forms of retail electric competition will result in net benefits for residential and low income consumers. On the contrary, we believe that many forms of retail electric competition will result in higher costs and risks, as well as poorer quality of service, for low income and residential consumers.

Therefore, the consumers organizations strongly recommend that the Commission design and implement a form of retail electric competition that will provide net benefits to all customer classes and segments, by ensuring that residential and low income consumers receive a fair share of the promised benefits, and by providing protections against increases in costs and risks, and decreases in quality of service. This is essential, at a minimum, to meet Commissioner Kunasek's principle of "do no harm."

The consumers organizations support the Proposed Rule as a reasonable framework for moving forward with retail electric competition, and recommend the Commission adopt the Proposed Rule as it is currently written.

The consumers organizations believe the Proposed Rule provides a reasonable framework for moving forward with retail electric competition. As a framework, the Proposed Rule provides opportunities for low income and residential consumers to benefit from retail electric competition. In addition, the Proposed Rule includes some important protections for residential and low income consumers that reduce their exposure to increases in costs and risks, and decreases in quality of service. The Proposed Rule also sets forth a reasonable process and schedule for resolving the remaining issues and details.

The Proposed Rule was developed with much opportunity for public input over a period of several years. The consumers organizations recognize that some important details and issues remain unresolved, and we provide comments on these specific issues below. We believe that these issues are best resolved through the working group, workshop, and future amendment process described in the Proposed Rule, rather than through long, protracted evidentiary hearings or delays in the adoption of the rule as a reasonable framework. The Proposed Rule sets forth a strict timeline that will encourage the parties to resolve the remaining issues and details in an expeditious manner.

Therefore, the consumers organizations recommend that the Commission adopt the Proposed Rule as it is currently written.

Some important details and issues regarding retail electric competition remain to be resolved. These details and issues must be resolved with the interests of residential and low income consumers in mind in order for retail electric competition to provide net benefits to these consumers.

The consumers organizations recognize that, as a framework, the Proposed Rule left some important details and issues unresolved. These issues must be resolved as we recommend below in order for low income and residential consumers to (1) have the opportunity to secure the promised net benefits of retail electric competition, and (2) avoid increases in costs and risks, and decreases in quality of service.

PROTECTIONS AGAINST INCREASES IN COSTS

The Proposed Rule does not provide sufficient protection for low income and residential consumers from the drawbacks of retail electric competition, particularly increases in costs and risks. As we have said previously, we will continue to challenge the utilities to agree to voluntary rate caps for residential and low income consumers as part of the Standard Offer tariffs to be filed in December 1997.

Implementing a voluntary rate cap for standard offer services would give low income and residential consumers two choices for obtaining electric services. First, consumers could choose to purchase electricity in the competitive generation market from an electric service provider, and thereby secure the benefits of a competitive market. About 35-40% of residential consumers (equivalent to 30% of eligible demand) would be given this choice during the first two phases of implementation; the remaining consumers would have this option in the last phase. Second, consumers could choose to remain with their existing utility by selecting the Standard Offer service. Under this option the consumers would be guaranteed that their rates would not increase, though rates could decrease if utility costs decrease (e.g., as set forth under the APS rate reduction settlement).

We believe our proposal for a Standard Offer rate cap equivalent to current rates is very reasonable for several reasons. The Commission has found current rates to be just and reasonable. The Commission also found that rates for Standard Offer service should not increase, relative to existing rates, as a result of allowing competition. Sections R14-2-1607(J) and R14-2-1608(A) state that stranded costs and system benefits charges may be recovered only from customers participating in the competitive market. Therefore, affected utilities requesting Standard Offer rates higher than current rates should be required to provide justification that proposed rates and services are just and reasonable, that no portion of the proposed increase in rates is due to competitive pressures, and that no portion of the proposed increase in rates is due to a reallocation of costs previously found to be just and reasonable by the Commission. (Technically, a very small rate increase could potentially be justified to support the Standard Offer portion of the increased funding level of system benefits programs. However, we believe cost savings from ongoing utility efforts to reduce costs and increase efficiencies should be sufficient to offset this potential increase by the time the utilities file tariffs on or before December 31, 1997.)

The Standard Offer service and associated rate cap should be continued until the Commission determines that retail electric competition has been "substantially implemented" in a manner that benefits the residential consumers (i.e., at a minimum, until all residential and low income customers have had an opportunity to obtain the benefits of retail competition, and until all stranded costs have been recovered).

OPPORTUNITIES TO BENEFIT FROM RETAIL ELECTRIC COMPETITION

The Proposed Rule provides some opportunities for low income and residential consumers to benefit from retail electric competition. Specifically, some low income and residential consumers will have the opportunity to secure early benefits through the allocation of at least 30% of eligible demand by the second phase of implementation. This should help to accelerate the development of a competitive market to serve the needs of all low income and residential consumers.

Additional efforts, including encouraging geographic and other forms of aggregation, are needed to stimulate the development of a viable competitive market for residential and low income consumers. For example, "postage stamp" distribution rates (i.e., common rates for all residential distribution customers of a given distribution utility) should be used to increase the opportunities for aggregation and decrease the potential for certain geographic areas (e.g., rural areas) to be charged very high, unaffordable rates.

BUY-THROUGHS

Section R14-1604(G) on buy-throughs could be open to an interpretation that would allow affected utilities and consumers to circumvent other provisions of the Rule. It appears that this section could be interpreted to (1) allow a utility to engage in buy-throughs with large customers above the limitations on eligible demand for large customers set for the first two phases, and (2) allow a customer to avoid stranded cost recovery and system benefits charges. We believe these would be misinterpretations of the Proposed Rule, and we do not believe that these misinterpretations are consistent with the intent of the Proposed Rule.¹

Three clarifications are required to prevent any such misinterpretations. First, the buy-throughs should be included in the eligible demand, and therefore should be restricted by the limitations on eligible demand for large customers. Second, buy-throughs should be included in the "competitive market" (and we believe they are), thereby subjecting them to all of the relevant provisions of the Proposed Rule, including those that allow stranded cost recovery and require system benefits charges only for those customer purchases made in the competitive market. Third, the Rule should state that buy-throughs should not result in an inequitable shifting of costs to consumers not participating in the buy-through.

We recognize that the nature of buy-throughs, as voluntary transactions between affected utilities and customers, may limit the risks and unintended consequences we have identified above. However, we believe that failure to clarify the Proposed Rule in the manner we described could lead to unjust discrimination among the customer classes and inequitable cost-shifting.

SALT RIVER PROJECT AND OTHER ELECTRIC UTILITIES NOT SUBJECT TO COMMISSION JURISDICTION

The consumers organizations believe it is essential to have Salt River Project and other Arizona electric utilities not subject to Commission jurisdiction participate fully in retail electric competition so that consumers in the service territories of these utilities have the opportunity to benefit. Mechanisms need to be developed very soon to ensure that these utilities and the

¹ We do not consider "buy-throughs" and "special contracts" (which have and will continue to require review and approval of the Commission) to be synonymous because the definition of buy-through in the Proposed Rule refers to a purchase of electricity at wholesale, whereas special contracts can supply electricity at other than wholesale prices.

consumers in their existing service territories can participate fully in the first phase of implementation. The mechanisms could be legislative, regulatory, or both. We do not believe that the mechanisms currently included in the Proposed Rule are sufficient. Any mechanism that is developed should: (1) ensure reciprocity in terms of service territories being required to be opened to competition, (2) resolve any "level playing field" concerns that would give one utility unfair competitive advantages over another due to tax or legal issues, and (3) require that all utilities agree to all the requirements of the Proposed Rule, with the Commission having jurisdictional and enforcement authority.

RELIABILITY

Reliability and safety should be ensured during and following the transition to retail electric competition. The consumers organizations support the formation and ongoing work of the electric reliability and safety working group as a mechanism for developing recommendations on reliability and safety.

STRANDED COSTS

The following factors should be added in R14-2-1607(D) and (I) to the list of factors the working group and Commission shall consider in making recommendations and determinations regarding stranded cost mechanisms and charges:

- New revenue opportunities that will be available under competition, including assets whose market values will increase substantially under competition (e.g., fiber optic distribution systems); and
- Previously compensated risk (i.e., risk premiums paid to utility shareholders).

We support subsection R14-2-1607(J) of the Proposed Rule that states that stranded costs may only be recovered from consumer purchases made in the competitive market. Residential and low income utility customers should not have to pay for any stranded costs resulting from competition in which they do not participate. In addition, stranded costs associated with one customer class should not be recovered from or shifted to any other class.

The stranded costs to be recovered from consumers receiving competitive services should be collected using a non-bypassable distribution access charge applied on a per kWh basis to the volume of energy sales to these consumers. The Commission should create a fund which the utilities could draw upon to pay for the stranded costs. The non-bypassable distribution access charges for stranded costs should be deposited in this fund.

SYSTEM BENEFITS

The Proposed Rule does not ensure continuation of and sufficient funding for important system benefits programs (i.e., low income, demand-side management, renewables, environmental, and research and development programs).

The system benefits charge is included as an element of restructuring policies and principles to ensure that important public interests, developed and implemented in a regulated environment, are not lost in the transition to retail electric competition. The Proposed Rule proposes to recover the costs related to these public programs through a non-bypassable charge or related mechanism. New programs, e.g. the solar portfolio standard, are not to be recovered through the system benefits charge.

The system benefits charge as presently proposed appears to leave the development, implementation, and recovery of costs related to system benefits entirely in the hands of the utilities. As such, utilities have little incentive to maintain even present commitment levels of energy efficiency, low income, research and development, and renewable programs. A floor based upon present commitments to these important public programs is needed to ensure that they are continued at sufficient levels to be able to meet these commitments.

We recommend that the appropriate system benefits charge minimums be established during the workshop process. The present commitment levels for each system should serve as the floor. By summing the present funding levels for energy efficiency, low income, and R&D with the amounts needed to achieve the IRP renewables and low-income commitments, we find that the system benefits charge should be 2% of retail revenues for APS and TEP.²

For affected utilities who presently do not have all of these programs, it would be appropriate to use the average % of revenues of those that do as the minimum.

In addition, we recommend that the nuclear power plant decommissioning monies be collected in a separate fund which should not be included in the amount for system benefits programs. Alternatively, nuclear decommissioning costs could be recovered as a stranded cost with the remainder of the regulatory assets.

The consumers organizations recommend that Staff, the utilities, and other interested parties further develop the system benefits charge, and funding levels and allocations within the charge, through a workshop process. Also, we recommend that Staff, the utilities, and other interested parties discuss any needed changes to the nature, scope, or focus of the programs, as well as the appropriate agent(s) to administer, design, implement, and/or evaluate the performance of these programs.

SOLAR PORTFOLIO STANDARD

The Proposed Rule does not provide adequate support for the modest goals of the solar portfolio standard.

²For reference purposes, California has set a system benefits charge equivalent to 2.75% of revenues for energy efficiency, low income, R&D, and renewables programs; and Rhode Island has set a charge equivalent to 2.5% of revenues for energy efficiency and renewables programs.

The proposed solar portfolio standard is quite modest, even based on the present cost of solar thermal and photovoltaic technologies. As such, it should be understood that this compromise is predicated upon the portfolio standard serving as a minimum requirement, and is in addition to both existing resource planning commitments to renewables and system benefits programs for renewables. Therefore, it should be made clear that any changes in the solar portfolio standard percentage applicable after December 31, 2001 would only be to increase the percentage requirement.

REQUIREMENTS FOR ADEQUATE INFORMATION AND FULL DISCLOSURE

The customer bills for the Standard Offer service should be required to display the components of the bundled rate in an unbundled manner so that consumers would be educated regarding the costs of the components of electric service. In addition, all customer bills should include information on the resource mix in the supplier's portfolio. This would help to give consumers the information they need to make decisions about competitive electric services.

Consumers will need to know which unbundled components of the bundled Standard Offer rate they will need to pay if they select a new electric service provider for generation services. Displaying the system benefits charge and the nuclear decommissioning fund as two distinct charges on the bill should take care of those issues, but we still need to address the potential for stranded costs to be recovered through consumer charges. One way to do this would be to require a notice on the bill that if the consumer chooses a different electric service supplier they must pay a stranded cost charge, with the amount disclosed on the bill. The problem with this, of course, is that all consumers may not see the notice, some of those who do will be confused by it, and all marketers may not disclose that consumers will be required to pay this charge. Another option would be to require utilities to display the generation component of the Standard Offer rate in two parts: a part similar to competitive generation service, and a part equal to the stranded investment charge the consumer must pay if they choose another supplier. We recommend the second option.

PUBLIC INVOLVEMENT AND INPUT

As retail electric competition decisions will have far reaching public policy impacts for the state of Arizona, we believe that the public (particularly residential consumers) should have the opportunity to participate in all deliberations. Resolution of the remaining issues and details must be done with fairness and equity in an open, participatory process with adequate opportunities for public input. All stakeholders should be involved in the process and have meaningful opportunities to participate. When developing processes designed to resolve the remaining issues, the Commission should consider the widely varying resources of the stakeholders, and the limited resources of some parties. A robust process that encourages broad public participation will result in regulations that provide better opportunities for consumers to benefit from retail electric competition while at the same time minimizing the dangers and risks.

**Original and ten copies of the foregoing filed
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